HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appl. No. 441 of 2005

Dr. Vinod Kumar
S/o Jai Prakash Gupta
R/o 24/ 3 Bhandari Bagh
Dehradun. .....Applicant

Versus

1. Judge Family Court
   Roorkee Haridwar.
2. Smt. Rekha Gupta
   W/o Dr. Vinod Kumar Gupta
   D/o Sri Brij Bhushan Goel
   R/o 128 Rajputana Mohalla
   Roorkee, District Haridwar .....Respondents.

Date:- 16th July, 2005

Hon'ble J.C.S. Rawat, J.

Heard Sri Yogesh Pandey i/b for Sri Arvind Vashist learned counsel for the applicant and learned A.G.A. for the State.

The petition under Section 482 Cr.P.C. has been filed against the order dated 20.4.2005 passed by the Addl. Family Judge, Roorkee, District Haridwar in case No. 60/2004 Rekha Gupta Vs. Vinod Gupta under section 125 Cr.P.C.

The factual position in a nutshell is that the marriage was solemnized between the applicant-Dr. Vinod Kumar and the respondent No.2 on 1.3.1987. Out of their wedlock , two children were born out; one son and one daughter. An application under Section 125 Cr.P.C. was filed by the respondent No.2 before the Addl. Family Court, Roorkee, Dehradun with the allegations that the respondent No.2 is unable to maintain herself and the applicant has failed to maintain here and at presently she is living in her parental house. It is further alleged in the application that the applicant has sufficient means to pay the maintenance. The

application was contested on the ground that the divorce petition is pending before the competent court. The applicant is a lecture in DAV P.G. College Dehradun and is getting Rs.12,600/- per month. It is an admitted fact that two children are living with the applicant. It was also alleged in the objection that she is earning from other sources and as such she is not entitled for maintenance. After hearing both the parties, the Addl. Family Court, Roorkee, Dehradun has allowed the said application and a sum of Rs.3000/- per month was awarded as maintenance.

I have heard the learned counsel for the applicant and learned A.G.A. and perused the record.

I have gone through the order of the learned Addl. Family Judge. It is an admitted fact that the applicant is a lecturer in DAV P.G. College, Dehradun and getting the salary of Rs.12,600/- per month. It is also an admitted fact that the two children are living with their father-applicant and the applicant has not filed any documentary evidence in support of the fact that the respondent No.2 is earning any amount. As such, it cannot be held that the respondent No.2 is able to maintain herself.

In view of the foregoing discussions, I am in completely in agreement with the finding of the Addl. Family Judge. Therefore, no interference is required with the findings of the trial court. The petition devoids of merit and is dismissed accordingly.

(J.C.S. Rawat, J.)

Dated 16-07-2005
LSR